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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,716	06/06/2005	Josef Schwagmann	2002P10577WOUS	2595
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Dickinson Wright, PLLC 1875 Eye Street, NW Suite 1200 Washington, DC 20006			EXAMINER KIM, TAE K	
			ART UNIT 2453	PAPER NUMBER
			NOTIFICATION DATE 01/05/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/520,716

**Applicant(s)**

SCHWAGMANN, JOSEF

**Examiner**

TAE K. KIM

**Art Unit**

2453

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is in response to the Applicant's response filed on September 11, 2008. Claims 11, 13, 14, 28, 29, and 30 have been amended by the Applicant. Claims 11 – 31, where Claims 11 and 28 are in independent form, are presented for examination.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 11, 2008 has been entered.

#### ***Response to Arguments***

Applicant's arguments filed on September 2008 have been fully considered but they are not persuasive. Applicant argued:

- a) With regards to Claims 11 and 28, Main fails to disclose a communication network that provides services within a related quality of service [See Applicant's Remarks Pg. 8].

Examiner respectfully disagrees with applicant's assertions.

1. With regards to a), the examiner points out that the pending claims must be "given the broadest reasonable interpretation consistent with the specification" [In re Prater, 162 USPQ 541 (CCPA 1969)] and "consistent with the interpretation that those

skilled in the art would reach" [In re Cortright, 49 USPQ2d 1464 (Fed. Cir. 1999)]. The amended claims still recite "a quality of service and/or error monitoring device" (emphasis added).

Although the Applicant elaborates on the differences between "jobs" and "services," the claim limitations are met if a QoS or an error monitoring device is disclosed by the prior art of record.

Main discloses that job performance data specifies the actual performance of a job's current and previous executions and include runtime, return codes and exceptions [Col. 4, lines 18-21]. Main further discloses that exceptions include ABENDs, terminations, and error codes [Col. 3, lines 60-61]. Therefore, Main discloses an error monitoring device that is used to monitor errors regarding job executions and determine if they impact service capacity of the network [Col. 2, lines 35-37, 46-47]. The currently presented claims do not distinguish over the prior art.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 11 – 14, 18 – 20, 22 –24, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,893,905, invented by Anthony A. Main et al. (hereinafter referenced as "Main").**

2. Regarding Claim 11, Main discloses a method for recognizing reductions in an expected service capacity in a communication network [Abstract, Fig. 5; system and method of recognizing job performance discrepancies] comprising of storing information

relating to functional properties and topological arrangement of network elements relevant to the provision of a service in a network element database and assigning the information to the service [Abstract; Col. 5, Line 59 – Col. 6, Line 4; system compares actual performance against SLA, identifies discrepancies, and analyzes the impact to other jobs in the job stream; multiple databases to stores data specifying job flow for each SLA collected, high level qualifiers/application groups of SLA jobs that are to be monitored each day, prior run data and clocktime data] on establishment and/or modification of the service [Col. 2, Lines 38-42; actual performance of jobs in previous executions are recorded and stored to determine average run time], providing the information stored in the network element database for a quality of service and/or error monitoring device [Col. 2, Lines 35-37, 60-61; collected data of previous executions are compare with current performances, including error codes], comparing recorded measured values to the information stored in the network element database by the quality of service and/or error monitoring device regarding inadmissible deviations [Col. 2, Lines 35-37, 46-47; collected data of previous executions are compare with current performances and alerts the user automatically if the SLA is in danger of not being met], and generating a message about a reduction in the expected service capacity in the event of an inadmissible deviation [Col. 2, Lines 35-37, 46-47; ASM reports these abnormal performances to the user automatically if the SLA is in danger of not being met].

3. Regarding Claim 12, Main discloses all the limitations of Claim 11 above. Main further discloses of storing information relating to network elements specified as

relevant to the provision of the service with regard to a service level agreement in the network element database (Col. 5, Line 59 – Col. 6, Line 4; fourth database stores data specifying job flow for each SLA collected and the fifth database stores the high level qualifiers/application groups of SLA jobs that are to be monitored each day) and recording measured values relating to the network elements specified as relevant to the provision of the service with regard to the service level agreement (Col. 5, Lines 59-67 – Col. 6, Lines 1-4; second database stores prior run data, the third database stores clocktime data, and fourth database stores data specifying job flow for each SLA collected).

4. Regarding Claims 13 and 14, Main discloses all the limitations of Claims 11 and 12 above. Main further discloses that the message sent to the user contains a statement about quality of of service and/or service availability (Col. 9, Lines 49-58; when SLA is in jeopardy the respective platforms are shown in red, highlighted or blinking).
5. Regarding Claims 18 – 20, Main discloses all the limitations of Claims 11, 12 and 13 above. Main further discloses that the information stored in the network element database describes admissible operating ranges of the network elements (Figs. 5 and 7; Col. 8 Lines 65 – Col. 9, Line 12; Col. 10, Lines 15-22 and 30-32; job record and current job times are compared to determine if they meet SLA requirements and the high level qualifiers/application groups of SLA jobs are stored and viewable through server).
6. Regarding Claims 22 – 24, Main discloses all the limitations of Claims 11, 12 and 13 above. Main further discloses that the network elements affected by the

establishment, modification and/or deletion of a service are configured by a network control system accessing the information stored in the network element database (Col. 9, Line 67 – Col. 10, Line 2; Col. 10, Lines 9-33; user has the option of creating, modifying or deleting SLAs; these configurations are retrieved from and stored in the high level qualifiers/application groups database).

7. Regarding Claims 26 and 27, Main discloses all the limitations of Claims 11 and 12 above. Main further discloses that the establishment and/or modification of the service initiates the recording of measured values relating to network elements specified by the service level agreement as relevant to provision of the service.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 15 – 17, 21, 25, and 28 – 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Main as applied to Claims 1 above, in view of U.S. Patent 6,556,659 B1, invented by Michel K. Bowman-Amuah (hereinafter referenced as “Bowman-Amuah”).**

8. Regarding Claims 15 – 17 and 31, Main, discloses all the limitations of Claims 11, 12 and 13 as stated above. Main, however, does not specifically disclose that the message about a reduction in service capacity is transmitted to a network control system for rectification of the reduction in service capacity.

Bowman-Amuah discloses the use of network management components to provide comprehensive solutions to address the discrepancies found in the network

regarding performance (Abstract; Col. 49, Lines 1 – 27). Bowman-Amuah further discloses that the message about a reduction in service capacity is transmitted to a network control system for rectification of the reduction in service capacity (Abstract; Fig. 15B-1, 15B-2, and 15B-3; Col 49. Line 53 – Col. 51, Line 30; fault management component sends alerts to user and network node manager, which in turn sends information to the remedy gateway to resolve performance issue). It would have been obvious to one skilled in the art at the time the application was filed to send a message to the network management component regarding performance discrepancies that affected the SLAs. All the necessary data to determine whether certain services or jobs met the SLA standards established within the system has already been collected and compared in the monitoring system disclosed by Main. The obvious reason to monitor for performance discrepancies is to resolve the discrepancies to meet the SLA levels. Many service providers agree to SLAs for their services at higher costs to the user. If their services do not meet the SLAs described, the service providers will either discount the services provided, or worse, lose the customer to a competitor. The notification is sent to the management components to allow service providers to maintain their services to the agreed upon levels and, therefore, meet their SLAs.

9. Regarding Claim 21, Main, in view of Bowman-Amuah, discloses all the limitations of Claim 15 above. Main further discloses that the information stored in the network element database describes admissible operating ranges of the network elements (Figs. 5 and 7; Col. 8 Lines 65-67 – Col. 9, Lines 1 –12; Col. 10, Lines 15-22 and 30-32; job record and current job times are compared to determine if they meet



SLA requirements and the high level qualifiers/application groups of SLA jobs are stored and viewable through server).

10. Regarding Claim 25, Main, in view of Bowman-Amuah, discloses all the limitations of Claim 15 above. Main further discloses that the network elements affected by the establishment, modification and/or deletion of a service are configured by a network control system accessing the information stored in the network element database (Col. 9, Line 67 – Col. 10, Lines 1-2; Col. 10, Lines 9-33; user has the option of creating, modifying or deleting SLAs; these configurations are retrieved from and stored in the high level qualifiers/application groups database).

11. Regarding Claims 28 – 30, Main discloses a communication network monitoring system [Abstract, Fig. 5; system and method of recognizing job performance discrepancies] comprising of a service providing device for establishing and/or modifying a service [Col. 9, Line 67 – Col. 10, Line 2; Col. 10, Lines 9-33; user has the option of creating, modifying or deleting SLAs], a communication connection management device for storing information relating to the functional properties and topological arrangement of network elements relevant to provision of the service in a network element database assigned to the communication connection management device [Abstract; Col. 5, Line 59– Col. 6, Line 4; system compares actual performance against SLA, identifies discrepancies, and analyzes the impact to other jobs in the job stream; multiple databases to stores data specifying job flow for each SLA collected, high level qualifiers/application groups of SLA jobs that are to be monitored each day, prior run data and clocktime data], for assigning this information to the service and for

providing the information stored in the network element database to a quality of service and/or error monitoring device [Col. 2, Lines 35-37, 60-61; collected data of previous executions are compare with current performances, including error codes], and a quality of service and/or error monitoring device for comparing recorded measured values with the information stored in the network element database for inadmissible deviations [Col. 2, Lines 35-37, 46-47; collected data of previous executions are compare with current performances and alerts the user automatically if the SLA is in danger of not being met] and, in the event of an inadmissible deviation, for generating a message about a reduction in service capacity giving details of the service concerned [Col. 9, Lines 49-58; when SLA is in jeopardy the respective platforms are shown in red, highlighted or blinking].

Main, however, does not specifically disclose that the network monitoring system is used to also control the processes within the network.

Bowman-Amuah discloses the use of network management components to provide comprehensive solutions to address the discrepancies found in the network regarding performance [Abstract; Col. 49, Lines 1 – 27]. It would have been obvious to one skilled in the art at the time the application was filed to implement a network management component to a network monitoring system that alerted the user of performance discrepancies that affected SLAs. All the necessary data to determine whether certain services or jobs met the SLA standards established within the system has already been collected and compared. The obvious reason to monitor for performance discrepancies is to resolve the discrepancies to meet the SLA levels.

Many service providers agree to SLAs for their services at higher costs to the user. If their services do not meet the SLAs described, the service providers will either discount the services provided, or worse, lose the customer to a competitor. The management components will allow service providers maintaining their services to the agreed upon levels and, therefore, meet their SLAs.

12. Regarding Claims 29 and 30, Main, in view of Bowman-Amuah, discloses all the limitations of Claim 28 above.

Bowman-Amuah further discloses the use of a computer program to enable a computer system to perform the features described above in Claim 28 (Col. 6, Lines 43-57). Furthermore, Bowman-Amuah discloses the use of a removable storage device to store the computer program (Col. 6, Lines 37-42). It would have been obvious to one skilled at the time the application was filed to use a computer program to enable a computer system to perform the described methods since the computer system will not perform without the proper executable code stored therein. It would also have been obvious to store the computer program within a removable storage unit to transfer the program to multiple systems.

### **Conclusion**

The Examiner point out that the reference(s) must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. See MPEP 2141.02, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). The Examiner has cited particular figures, columns, line numbers, and/or paragraphs in the references

applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well.

### **Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (571) 272-6776. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/

Tae K. Kim  
Examiner, Art Unit 2453

December 16, 2009

/THUHA T. NGUYEN/  
Primary Examiner, Art Unit 2453